



# **MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 9**

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## **CASUAL AND INFREQUENT SALES**

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

### **1. CASUAL SALES.**

"Casual sales" are isolated transactions in which tangible personal property is sold but where the sale is not in the course of repeated and successive transactions of a like character. Casual sales, other than casual sales of the kinds of property listed in Section 3, are not subject to sales or use tax.

### **2. NONTAXABLE CASUAL SALES.**

The following are examples of casual sales. Unless the property sold is of one of the kinds listed in Section 3, it is not subject to sales or use tax.

- a. Isolated sales of a nonrecurring nature made by a person who is not engaged in the business of selling tangible personal property or taxable services.
- b. Sales of tangible personal property originally acquired for use or other consumption by a retailer or seller, which is not of the same kind as that sold in the regular course of any business engaged in by that retailer or seller.
- c. Sales made by a personal representative in the settlement of an estate, unless those sales continue the operation of a retail business or are made by a retailer.
- d. The sale of an entire business by the owner.
- e. Judicial sales, executions, etc., unless made by a registered retailer.
- f. Sales by a person engaged in a business or occupation such as manufacturing or farming, of used machinery, fixtures, equipment or similar items when the seller is not engaged in the business of selling those items.

- g. Sales, including sales of meals, by a civic, religious or fraternal organization at bazaars, fairs, rummage sales, picnics or similar events, provided that the organization is not required to have a seller's registration certificate.

### **3. TAXABLE CASUAL SALES.**

Section 1764 of the Sales and Use Tax Law imposes the use tax on casual sales of the following kinds of property:

- a. Motor vehicles
- b. Aircraft
- c. Camper trailers
- d. Special mobile equipment, except farm tractors, lumber harvesting vehicles and loaders, and lawn and garden tractors.
- e. Livestock trailers, including horse trailers
- f. Watercraft

Definitions of these kinds of property can be found in Instruction Bulletin No. 24.

If a watercraft, aircraft or highway vehicle is sold at casual sale and the seller does not report and pay tax on the transaction, tax will be collected from the purchaser by the registering agency as a prerequisite to registration.

### **4. TRANSACTIONS SIMILAR TO BUT DEEMED NOT TO BE CASUAL SALES.**

The following are examples of transactions which, although they may appear to resemble casual sales, are deemed to be retail sales. Sales of the kinds listed below are subject to Maine sales or use tax in the same way as other retail sales.

- a. Sales made in the ordinary course of business by a registered retailer on behalf of the owner, even though the owner is not in the business of making such sales. A retailer has the same duties when making sales of property belonging to another as when selling the retailer's own goods.
- b. Retail sales by a manufacturer, wholesaler, processor or jobber of the kinds of property ordinarily produced or sold by that business, even though retail sales are infrequent and comprise only a small fraction of the total sales of that business.
- c. Sales that are an integral part of a business, such as the sale of repossessed personal property by a bank or finance company, even though the sale of tangible personal property is not the primary activity of that business.
- d. Sales by lessors of personal property previously rented or leased.

## **5. SALES BY NONPROFIT ORGANIZATIONS.**

When civic, religious, fraternal and other nonprofit organizations conduct fund raising campaigns of limited duration involving the sale of candy, light bulbs, novelties or other tangible personal property, those sales qualify as casual sales which are not taxable unless the organization is registered or required to be registered as a seller.

Any nonprofit organization is required to register as a seller under the Sales and Use Tax Law if it engages in sales of tangible personal property or taxable services on a continuing basis or if it continuously holds itself out to the public as a seller. If an organization is registered as a seller, all sales made by it, regardless of location or the type of event, are subject to tax.

**a. Nonprofit organizations that are not registered as a seller.** Although the organization would not collect tax on its sales, it must pay sales tax to the vendor when purchasing the goods it intends to sell. If tax is not paid to the vendor (as, for example, when the goods are bought from an out-of-state vendor not registered to collect Maine tax), the organization should remit tax directly to Maine Revenue by check or money order made payable to the State Treasurer. The tax is based on the cost of the goods multiplied by the applicable sales tax rate. Payment should be accompanied by a brief letter explaining the reason for the payment.

**b. Nonprofit organizations that have been granted a sales and use tax exemption by Maine Revenue Services.** The organization would not collect tax on its sales and would not pay tax to the vendor on the goods it intends to sell since all of its purchases are exempt. The organization should present its exemption certificate to the supplier to document the exempt purchase. Additionally, the organization would not be liable for use tax if the purchase was made from an out-of-state vendor who is not registered to collect Maine tax.

**c. Nonprofit organizations that are registered or are required to be registered as a seller.** The organization must collect and remit sales tax on all its sales. The organization does not pay sales tax to the vendor since the purchase is being made for resale. The organization should present a resale certificate to the vendor to document the exempt purchase.

**An organization that is registered as a seller does not have the option of paying tax to its suppliers and selling tax-free.**

## **6. YARD SALES, LAWN SALES AND GARAGE SALES.**

When individuals who are not in the business of selling that kind of property dispose of their own used household items by selling them at a yard sale or similar event, or by placing an advertisement in the classified section of a newspaper, they are making casual sales. Persons in this situation are not required to register as sellers or to collect sales or use tax from their customers. If the property sold is a motor vehicle, aircraft, watercraft, camper trailer, livestock trailer or special mobile equipment, the purchaser is responsible for payment of the tax directly to the State.

So-called yard sales that are operated on a continuing basis or include items produced or acquired for resale by the seller are not casual sales. Persons who operate businesses of this type are required to register as sellers under the Sales and Use Tax Law and to collect, report and remit Maine sales tax in the same way as other retailers. If used household items are intermingled with items produced or acquired for resale, all sales are subject to tax.

**7. ADDITIONAL INFORMATION.**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1065  
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**ATTACHMENT #1**  
**Excerpts taken from 36 M.R.S.A.**

**36 §1752. Definitions**

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

**1-D. Casual sale.** "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sales" include transactions by a civic, religious or fraternal organization which is not a registered retailer at a bazaar, fair, rummage sale, picnic or similar event. The sale by a registered retailer of tangible personal property which that retailer has used in the course of the retailer's business is not a "casual sale" if that property is of like character to that sold in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which tangible personal property is sold by a representative for the owner's account when that representative is a registered retailer and the registered retailer shall have the same duties respecting any such transaction as if the representative had sold on the representative's own account.

**10. Retailer.** "Retailer" means any person who makes retail sales or who is required to register by section §1754-A or §1754-B or who is registered under section §1756.

**11. Retail sale.** "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

**13. Sale.** "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

**36 §1764. Tax against certain isolated sales**

The tax imposed by chapters 211 to 225 shall be levied upon all casual sales involving the sale of camper trailers, motor vehicles, special mobile equipment except farm tractors and lumber harvesting vehicles or loaders, livestock trailers, watercraft or aircraft except those sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, limited liability company or limited liability partnership.

**Relevant Rules: None**